

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	MB Docket No. 03-185
Commission's Rules to Establish Rules for	)	
Digital Low Power Television and Television	)	
Translator Stations	)	
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	
	)	
Amendment of Part 15 of the Commission's	)	ET Docket No. 14-175
Rules to Eliminate the Analog Tuner	)	
Requirement	)	

To: Secretary, FCC  
For: The Commission

**REPLY COMMENTS OF  
CAPITOL BROADCASTING COMPANY, INC.**

Capitol Broadcasting Company, Inc. ("CBC") hereby submits these reply comments in response to the Commission's October 10, 2014 *Third Notice of Proposed Rulemaking* ("*Third NPRM*").<sup>1</sup> This proceeding addresses the Commission's legitimate concerns about minimizing the potential impact of the incentive auction and the repacking process on low power television ("LPTV") and TV translators. As CBC has noted, LPTV stations provide valuable service to the public and that service is likely to be severely impacted by the repacking process as it is

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<sup>1</sup> *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Tuner Requirement*, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) ("*Third NPRM*").

currently proposed.<sup>2</sup> Accordingly, these issues must be resolved before the incentive auction commences.

Through a subsidiary, CBC is the licensee of digital LPTV station WILM-LD, Wilmington, North Carolina (“WILM”) which is the local CBS affiliate and, along with other television stations in Wilmington, was part of the first group of stations to transition to all-digital operations in 2008. CBC also holds a construction permit for TV translator station W24DP-D, Wilmington, North Carolina (“W24DP”) which CBC is currently in the process of constructing (despite the uncertainties surrounding the future of such stations post-auction). CBC has a long history of innovation in television broadcasting and is respected throughout the industry as a pioneer in broadcast and wireless technology. Therefore, this proceeding is of particular interest to CBC as the Commission considers ways to ensure that LPTV remains a viable service post-auction. CBC takes this opportunity to address two key aspects of the *Third NPRM*: 1) priority access to channels in any repacking; and 2) channel sharing.

**I. In Any Repacking, the Commission Should Prioritize LPTV and TV Translator Stations that Have Demonstrated a Commitment to Serving their Communities**

One of the key questions in any repacking will be the extent to which there will be more LPTV and TV translator stations than there are available channels post-auction. Full-power and Class A TV stations will have priority access to channels in the reduced TV band, and it is likely that not all LPTV and TV translators can be accommodated. The *Third NPRM* proposes rules to

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<sup>2</sup> Comments of Capitol Broadcasting Company, Inc., GN Docket No. 12-268, at 2 (filed Mar. 12, 2013).

prioritize digital replacement translators for full power TV stations, but is silent as to prioritizing LPTV and TV translator stations.<sup>3</sup>

Given the importance of these services to their local communities, and the Commission's prior efforts in the context of the DTV transition to ensure the ongoing viability of LPTV service,<sup>4</sup> CBC joins other commenters in urging the Commission to prioritize access to available channels for LPTV and TV translator stations that have demonstrated their dedication to providing local television services.

For example, Block Communications recommends that LPTV and TV Translator stations which "provide local-market, network-affiliated service or substantial amounts of local news or public affairs programming" should be given priority in any repacking.<sup>5</sup> CBC agrees. WILM-LD is a CBS affiliate, providing substantial amounts of local, network, public affairs, and emergency weather programming upon which the local community has come to rely. Time and

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<sup>3</sup> *Third NPRM* ¶¶ 35-36. The *Third NPRM* does suggest that the Media Bureau might assist LPTV and TV translators to locate a post-auction channel by using the Commission's optimization model. *Id.* ¶¶ 45-46. While CBC believes that this proposal may help assist some stations in locating available channels on a voluntary basis, the Commission should do more to help LPTV and TV translator stations by granting priority access to channels as discussed herein.

<sup>4</sup> See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, ¶¶ 141-147 (1997) ("DTV Sixth Report and Order").

<sup>5</sup> Comments of Block Communications, Inc., at 3 (filed Jan. 12, 2015). *Accord* Comments of National Religious Broadcasters, at 10-11 (filed Jan. 12, 2015) (proposing to grant auction and spectrum protection rights to any low power station that can demonstrate that it has essentially and substantially met the qualifications to apply for Class A status). While WILM-LD is not a Class A station, it effectively operates as one. CBC likewise supports the proposal of DTV America, which would allow LPTVs to qualify for post-repack primary status by pledging to maintain a specified level of service as determined by the Commission. See DTV America Comments, at 4-6 (filed Jan. 12, 2015).

again, the station has demonstrated its commitment to its community, both on and off air.<sup>6</sup> Thus, under Block's priority access criteria, the Commission would help ensure that WILM-LD's viewers will continue to have access to the station's important programming post-auction.

Alternatively, the Commission could grant priority access to post-auction channels for all licensed and operational digital LPTV and TV translator stations, while giving secondary consideration to licensed analog LPTV/TV translator facilities and unbuilt digital facilities with outstanding construction permits. Giving priority to those stations that have gone through the burden and significant expense of completing construction of their digital facilities is not only a rational policy approach, it would also serve as a significant incentive for analog licensees and unbuilt permit holders to commence digital operations by the cut-off date selected by the Commission. As noted by LMO Christian Media, stations that are not yet operating at all "do not deserve as much protection as local LPTV stations that are on the air utilizing regularly scheduled local programming."<sup>7</sup> Clearly stations would need to be provided sufficient notice in order to complete construction of their facilities. Therefore, CBC recommends that the Commission establish the cut-off date as the date that the incentive auction commences.

Under this approach, digital LPTV and TV translator stations that are licensed or who have filed a license application by such date would be prioritized over those LPTV and TV translator facilities that have not yet taken these steps. Prioritized stations would be eligible for a

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<sup>6</sup> WILM-LD proudly participates throughout the year to help various organizations in their fundraising efforts. Additionally, the station assists numerous Wilmington charitable organizations by announcing their events through the very popular "WILM Community Calendar."

<sup>7</sup> Comments of LMO Christian Media, at 5 (filed Jan. 12, 2015) ("LMO Comments").

special filing window,<sup>8</sup> in which the Commission would waive its requirements that a displacement application for a new channel must demonstrate interference caused to or received from a primary station and be submitted only after the primary station obtains a construction permit or license,<sup>9</sup> just as the Commission did during the DTV transition.<sup>10</sup> This approach would allow prioritized stations filing in the window to be considered “cut off” from competing applications as of the last day of the filing window, and thus protect them from having to wait until interference from a full power or Class A television station actually occurs before they can be permitted to file. The Commission can also prioritize the processing of such applications over that of previously-filed new station and modification applications filed by other LPTV and TV translator stations.<sup>11</sup>

CBC does not make this recommendation simply from the self-interested standpoint that WILM is already a licensed and operational digital station and thus would benefit from this proposal. On the contrary, as noted above, CBC is also the permittee of unbuilt digital TV translator station W24DP. CBC would have every incentive under this proposal to expend the resources necessary to complete construction of W24DP and file a license application before the cut-off date. CBC believes this prioritization approach represents the best market-based

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<sup>8</sup> The Commission should prioritize licensed and operational digital facilities as opposed to licensed and operational analog facilities that have not yet completed the digital transition. The Commission could consider a separate, subsequent window for licensed and operational analog facilities which would be prioritized over unbuilt permit holders.

<sup>9</sup> See 47 C.F.R. § 73.3572.

<sup>10</sup> See *DTV Sixth Report and Order* ¶ 141.

<sup>11</sup> See *id.* §§ 73.3572(a)(4), 74.787(a)(4). The Commission could also use the optimization model as noted above and other engineering solutions to help minimize or avoid mutually exclusive applications filed in the window.

approach for encouraging LPTV and TV translator stations to complete the digital transition in a timely manner, while prioritizing channel access for those that do.

## **II. Channel Sharing Among LPTV/TV Translators Should Be Permitted but Not Mandatory**

If the Commission adopts one of the prioritization proposals above, it is CBC's anticipation that there will be sufficient UHF and VHF channels available post-auction for all displaced licensed and operational LPTV and TV translators.<sup>12</sup> However, to the extent that channel sharing among LPTV and TV translator stations is desired or needed, any such arrangements should be flexible and completely voluntary, without the need for channel share participants to spend significant amounts of time or money in order to meet Commission channel sharing requirements prior to knowing whether there will even be channels to share.

LPTV and TV translator stations should be permitted to decide by themselves, taking into account their unique circumstances and bandwidth requirements, whether and how they choose to enter into channel sharing agreements, and with whom they choose to enter into such agreements. Many commenters echo this sentiment,<sup>13</sup> and the one commenter that disagrees simply fails to offer any credible rationale for mandatory channel sharing, and even acknowledges that any involuntary channel sharing obligation "would run counter to more than 30 years of licensing policies with respect to LPTV and TV translator stations."<sup>14</sup> Finally, it is worth noting that channel-sharing will be of limited value for those LPTV stations that choose to

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<sup>12</sup> CBC also proposes that the Commission allow LPTV and TV translator stations operating on UHF band channels to file waiver requests to move to the VHF band in advance of the auction.

<sup>13</sup> See, e.g., LMO Comments at 2; Advanced Television Broadcasting Alliance, at 5 (filed Jan. 12, 2015).

<sup>14</sup> Open Technology Institute at New America Foundation and Public Knowledge Comments, at 11 (filed Jan. 12, 2015).



operate like a full-power station with maximum bandwidth dedicated to HD programming or multiple multicast streams, particularly if the station is affiliated with a major network.

In sum, the Commission should adopt every possible measure it can to ensure the survival of the LPTV and TV translator service. While the above proposals will not completely ameliorate the difficulties that such stations will encounter both before and after the incentive auction, they will present a step in the right direction and will help balance the competing needs for television spectrum post-auction.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INC.



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February 2, 2015